

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JAMES H. McKEE,)
Petitioner,)
v.) No. 4:08-CV-754-CAS
STATE OF MISSOURI,)
Respondent.)

MEMORANDUM AND ORDER OF TRANSFER

This matter is before the Court upon the petition of James H. McKee for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and his motion for leave to commence this action without payment of the required filing fee. See 28 U.S.C. § 1915(a). Upon consideration of the financial information provided with the application, the Court finds that petitioner is financially unable to pay any portion of the filing fee. Therefore, the Court grants petitioner leave to proceed in forma pauperis.

Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He was convicted and sentenced in the Circuit Court of the City of St. Louis in April 1988 on charges of forcible rape, forcible sodomy, tampering in the first degree, and felonious restraint.

The Court's records show that petitioner previously brought a § 2254 petition for a writ of habeas corpus, and that the action was denied on the merits. See McKee v. Groose, No. 91-1709C(2)(E.D.Mo.). The Eighth Circuit Court of Appeals denied petitioner a certificate of appealability and dismissed the appeal. McKee v. Groose, No. 93-1986EMSL (8th Cir. 1993).

Title 28 U.S.C. § 2244(b)(3)(A) provides that "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."

Because petitioner did not obtain permission from the Eighth Circuit Court of Appeals to maintain the instant § 2254 application in this Court, the Court lacks authority to grant petitioner the relief he seeks. Rather than dismiss this action, the Court will transfer the petition to the United

States Court of Appeals for the Eighth Circuit pursuant to 28 U.S.C. § 1631. See In re Sims, 111 F.3d 45, 47 (6th Cir. 1997); Coleman v. United States, 106 F.3d 339 (10th Cir. 1997); Liriano v. United States, 95 F.3d 119, 122-23 (2d Cir. 1996).

Accordingly,

IT IS HEREBY ORDERED that petitioner's motion for leave to proceed in forma pauperis is **GRANTED**. [Doc. 2]

IT IS FURTHER ORDERED that no order to show cause shall issue as to the respondent, because the instant petition is successive under 28 U.S.C. § 2244(b)(3)(A).

IT IS FURTHER ORDERED that petitioner's application for a writ of habeas corpus is **DENIED**, without prejudice.

IT IS FURTHER ORDERED that the Clerk shall **TRANSFER** the instant petition to the United States Court of Appeals for the Eighth Circuit pursuant to 28 U.S.C. § 1631.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 30th day of June, 2008.